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**From:**

**Sent:** Monday 3/30/2009 3:47 PM

**To:**

**Cc:**

**Subject:** RE: Depreciation Allowed As a Recognized Loss Under 1374

forwarded your issue to me and regarding the treatment of excess depreciation deductions for purposes of computing net recognized built-in gain for purposes of section 1374. The taxpayer is attempting to reduce recognized built-in gain by depreciation attributable to the amount of built-in loss on assets at the time of the conversion to S corp status. The taxpayer is attempting to use the definition of RBIG that we use for purposes of section 382(h) for purposes of section 1374. It is my personal opinion that such a use is inappropriate. Notice 2003-65 describes the available methods for purposes of section 382 and even has a method called the 1374 method. The Notice, however, contains the following sentence.

The 1374 approach departs from the tax accrual rule and the regulations under section 1374 in its treatment of amounts allowable as depreciation, amortization, or depletion (collectively, "amortization") deductions during the recognition period. In accordance with the second sentence of **section 382(h)(2)(B)**, except to the extent the loss corporation establishes that the amount is not attributable to the excess of an asset's adjusted basis over its fair market value on the change date, these amounts are treated as RBIL, regardless of whether they accrued for tax purposes before the change date.

In other words, the tax accrual rule in the regulations under section 1374 does not allow for the reduction of BIG with depreciation with respect to BIL assets. Feel free to call me if you would like to discuss the matter further.